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DISTRICT OF OREGON

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Attorneys for Tort Claimants Committee

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re

ROMAN CATHOLIC ARCHBISHOP
OF PORTLAND IN OREGON, AND
SUCCESSORS, A CORPORATION
SOLE, dba the ARCHDIOCESE OF
PORTLAND IN OREGON,

Debtor.

Case No. 04-37154-elp11

ROMAN CATHOLIC ARCHBISHOP
OF PORTLAND IN OREGON, AND
SUCCESSORS, A CORPORATION
SOLE, dba the ARCHDIOCESE OF
PORTLAND IN OREGON,

Plaintiff,

Adv. Proc. No. 04-3373-elp

**TORT CLAIMANTS COMMITTEE'S
MOTION TO INTERVENE**

ORAL ARGUMENT REQUESTED

v.

ACE USA, INC., a Delaware
corporation; CENTENNIAL
INSURANCE COMPANY, a New York
corporation; FIREMAN'S FUND
INSURANCE COMPANY, a California
corporation; GENERAL INSURANCE

COMPANY OF AMERICA a member
company of SAFECO INSURANCE
COMPANY OF AMERICA, a
Washington corporation; INTERSTATE
FIRE & CASUALTY COMPANY, an
Illinois corporation; INTERSTATE
INSURANCE GROUP, an Illinois
corporation; NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURG, a member company of
AMERICAN INTERNATIONAL
GROUP, INC., a Delaware corporation;
ONEBEACON AMERICA
INSURANCE COMPANY, a
Pennsylvania corporation; ST. PAUL
FIRE AND MARINE INSURANCE, a
Minnesota corporation; and CERTAIN
JOHN DOE INSURANCE
COMPANIES,

Defendants.

Pursuant to Fed. R. Bankr. P. 7024 and Fed. Rule Civ. P. 24, the Tort
Claimants Committee ("the Committee") moves for an Order (1) granting the Committee
leave to intervene of right in the above-captioned Adversary Proceeding pursuant to
Fed. R. Civ. P. 24(a)(2) or, in the alternative, granting the Committee leave to intervene
permissively pursuant to Fed. R. Civ. P. 24(b)(2); and (2) granting the Committee leave to
file the Complaint in Intervention attached hereto as Exhibit 1.

This motion is supported by the Tort Claimants Committee's Memorandum in
Support, the Affidavit of Timothy J. Conway, and the documents on file herein.

DATED this 19th day of November, 2004.

TONKON TORP LLP

By 
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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re

ROMAN CATHOLIC ARCHBISHOP OF
PORTLAND IN OREGON, AND SUCCESSORS, A
CORPORATION SOLE, dba the ARCHDIOCESE OF
PORTLAND IN OREGON,

Debtor.

ROMAN CATHOLIC ARCHBISHOP OF
PORTLAND IN OREGON, AND SUCCESSORS, A
CORPORATION SOLE, dba the ARCHDIOCESE OF
PORTLAND IN OREGON,

Plaintiff,

and

TORT CLAIMANTS COMMITTEE,

Intervenor-Plaintiff,

v.

ACE USA, INC., a Delaware corporation;
CENTENNIAL INSURANCE COMPANY, a New

Case No. 04-37154-elp11

Adv. Proc. No. 04-3373-elp

**TORT CLAIMANTS
COMMITTEE'S
COMPLAINT IN
INTERVENTION**

York corporation; FIREMAN'S FUND INSURANCE)
 COMPANY, a California corporation; GENERAL)
 INSURANCE COMPANY OF AMERICA, a member)
 company of SAFECO INSURANCE COMPANY OF)
 AMERICA, a Washington corporation; INTERSTATE)
 FIRE & CASUALTY COMPANY, an Illinois)
 corporation; INTERSTATE INSURANCE GROUP, an)
 Illinois corporation; NATIONAL UNION FIRE)
 INSURANCE COMPANY OF PITTSBURG, a)
 member company of AMERICAN INTERNATIONAL)
 GROUP, INC., a Delaware corporation;)
 ONEBEACON AMERICA INSURANCE)
 COMPANY, a Pennsylvania corporation; ST. PAUL)
 FIRE AND MARINE INSURANCE, a Minnesota)
 corporation; and CERTAIN JOHN DOE INSURANCE)
 COMPANIES,)

Defendants.)

Intervenor-Plaintiff, the Official Committee of Tort Claimants (the
 "Committee"), alleges as follows:

INTRODUCTION

1. Nature of Action. Plaintiff, Roman Catholic Archbishop of Portland, Oregon, and successors, a corporation sole, dba the Archdiocese of Portland in Oregon (the "Archdiocese"), brought this insurance coverage action for declaratory relief and for damages incurred as a result of the breaches of insurance contracts and policies by the defendant insurance companies and underwriters that sold the Archdiocese insurance during the period of 1941 to 2000 (collectively referred to as the "defendants"). Each defendant is listed, along with its applicable insurance policy numbers and policy periods (collectively referred to as the "Insurance Policies"), on Exhibit 1 to the Archdiocese's Complaint, which is incorporated herein by reference.

2. Underlying Claims. The Archdiocese has in the past and continues to defend itself in numerous civil actions alleging sexual misconduct by Archdiocesan personnel during the period in which the Archdiocese was insured by defendants. These civil actions are listed on Exhibit 2 to the Archdiocese's Complaint, which is incorporated herein

1 by reference. In addition to the actions listed on Exhibit 2, the Archdiocese has also
 2 defended itself in other claims and threatened claims alleging sexual misconduct. The
 3 Committee and the Archdiocese expect that additional claims alleging sexual misconduct
 4 will be asserted. These past, present and future claims alleging sexual misconduct by
 5 Archdiocesan personnel are hereinafter referred to as the "Underlying Claims." The
 6 Committee represents these present and future tort claimants, both known and unknown, in
 7 the Archdiocese's bankruptcy case.

8 3. Claim for Relief. The Archdiocese has and continues to incur
 9 significant costs and damages because certain defendants refused to defend and/or fully
 10 indemnify the Archdiocese in the Underlying Claims. The Archdiocese has filed for
 11 bankruptcy protection, in part, because certain defendants refused to honor their respective
 12 Insurance Policies. In this Adversary Proceeding, the Archdiocese seeks a declaratory
 13 judgment as to the defendant's past, present and future obligation to defend and/or indemnify
 14 it with respect to the underlying Claims (First Claim), as well as compensatory damages for
 15 breach of contract (Second Claim). The Archdiocese also asserts claims against defendant
 16 Safeco for contractual and tortious breach of the duty of good faith and fair dealing (Third
 17 and Fourth Claims), bad faith (Fifth Claim) and breach of fiduciary duty (Sixth Claim).

18 The Committee has a direct and legally protectable interest in the
 19 Archdiocese's insurance coverage within the meaning of Fed. R. Civ. P. 24, which is
 20 applicable in adversary proceedings pursuant to Fed. R. Bankr. P. 7024.

21 The Committee represents tort claimants, both known and unknown, in the
 22 Archdiocese's bankruptcy case. As debtor-in-possession, the Archdiocese owes a fiduciary
 23 duty to its creditors to protect and maximize the assets of the bankruptcy estate. One
 24 Committee member, Joseph Chestnut, has entered into an enforceable settlement agreement
 25 with the Archdiocese on which he is owed a balance of \$1,300,000. Moreover, the
 26 Archdiocese has conceded that it has incurred liability to at least some tort claimants who

1 have not yet obtained a judgment against or entered into a settlement with the Archdiocese.
 2 According to the Archdiocese's Schedules, it is insolvent. If this contention is accurate,
 3 coverage under defendant's respective Insurance Policies is the only means of satisfying all
 4 but a fractional amount of the tort claimants' unsecured claims. Accordingly, the Committee
 5 seeks a declaratory judgment that the Archdiocese is entitled to all the relief sought in its
 6 Complaint, as well as such other and further relief as the Court deems just and proper.

7 **PARTIES**

8 4. Plaintiff. The Archdiocese is an Oregon corporation sole with its
 9 principal places of business in Portland, Oregon. The Archdiocese is the named insured in
 10 each of the Insurance Policies it purchased for valuable consideration from defendants.

11 5. Intervenor-Plaintiff. The Committee has been appointed pursuant to
 12 11 U.S.C. § 1102 to represent tort claimants in the Archdiocese's bankruptcy case. The
 13 Committee has standing to intervene in this action pursuant to Fed. R. Bankr. P. 7024 and
 14 Fed. R. Civ. P. 24.

15 6. Defendants. Defendants are, or at all relevant times were, engaged in
 16 the business of selling insurance policies and/or providing insurance services in Oregon,
 17 among other places. The Archdiocese has identified all known defendants and their
 18 respective Insurance Policies sold to the Archdiocese in Exhibit 1 of its Complaint.

19 7. ACE. Defendant ACE USA, Inc. ("ACE"), is a Delaware corporation
 20 with its principal place of business in a state other than Oregon. ACE is authorized to do
 21 business in a state other than Oregon. ACE is authorized to do business and is doing
 22 business in Oregon.

23 8. Centennial. Defendant Centennial Insurance Company ("Centennial")
 24 is a New York corporation with its principal place of business in a state other than Oregon.
 25 Centennial is authorized to do business and is doing business in Oregon.

26 9. Fireman's. Defendant Fireman's Fund Insurance Company

1 ("Fireman's) is a California corporation with its principal place of business in a state other
2 than Oregon. Fireman's is authorized to do business and is doing business in Oregon.

3 10. Safeco. Defendant Safeco is a Washington corporation with its
4 principal place of business in Seattle, Washington. Safeco is authorized to do business and is
5 doing business in Oregon.

6 11. Interstate. Defendant Interstate Fire & Casualty Company is an
7 Illinois corporation with its principal place of business in a state other than Oregon.
8 Interstate is authorized to do business and is doing business in Oregon and is a wholly-owned
9 subsidiary of Interstate Insurance Group (collectively "Interstate"), an Illinois corporation
10 with its principal place of business in a state other than Oregon. Interstate is authorized to do
11 business and is doing business in Oregon and is a wholly-owned subsidiary of Interstate
12 Insurance Group (collectively "Interstate"), an Illinois corporation.

13 12. National Union. Defendant National Union Fire Insurance Company
14 of Pittsburg ("National Union") is a wholly-owned subsidiary and member company of AIG,
15 a Delaware corporation with its principal place of business in a state other than Oregon.
16 National Union is authorized to do business and is doing business in Oregon.

17 13. OneBeacon. Defendant OneBeacon America Insurance Company
18 ("OneBeacon") is a Pennsylvania corporation with its principal place of business in a state
19 other than Oregon. OneBeacon is authorized to do business and is doing business in Oregon.

20 14. St. Paul. Defendant St. Paul Fire and Marine Company ("St. Paul") is
21 a Minnesota corporation with its principal place of business in a state other than Oregon.
22 St. Paul is authorized to do business and is doing business in Oregon.

23 15. John Doe Defendants. Defendants Certain John Doe Insurance
24 Companies ("John Doe Defendants") are insurance companies presently unknown to the
25 Archdiocese that sold insurance policies to the Archdiocese during the period of Underlying
26 Claims. The John Doe Defendants and insurance policies sold by the John Doe Defendants

1 to the Archdiocese are deemed a part of this action so that when (and if) information
 2 identifying such additional defendants and insurance policies becomes available, the
 3 Archdiocese will amend its Complaint and exhibits to include that information.

4 16. Subject Matter Jurisdiction. This Court has original subject matter
 5 jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the matter in controversy
 6 with respect to each defendant exceeds \$75,000, exclusive of interest and costs, and is
 7 between citizens of different states. This is a non-core proceeding over which this Court has
 8 jurisdiction pursuant to 28 U.S.C. §§ 157(c) and 1334(b), and United States District Court
 9 Local Rule 2100-1. In the event that any defendant files a proof of claim in this bankruptcy
 10 case, the Committee reserves the right to assert that this Court also has jurisdiction over this
 11 civil action pursuant to 28 U.S.C. §§ 157(b)(2)(C), 1334(a), and 1452.

12 17. Personal Jurisdiction. This Court has personal jurisdiction over each
 13 defendant because they or their predecessors or successor-in-interest:

- 14 (a) are authorized and/or licensed to do business in Oregon;
- 15 (b) have, within the relevant time periods, transacted the business
 16 of selling insurance and/or provided insurance services in Oregon;
- 17 (c) sold and/or issued contracts of insurance and insurance services
 18 to the Archdiocese in Oregon; and/or
- 19 (d) have sufficient contacts with Oregon regarding the insuring of
 20 the Archdiocese, including the handling of the Archdiocese's claims for insurance, so that
 21 personal jurisdiction over each defendant in Oregon is reasonable.

22 18. Venue. Venue is proper in this district under 28 U.S.C. § 1391(a)
 23 because a substantial part of events or omissions giving rise to the claims alleged in this
 24 action occurred in Oregon. Venue is proper pursuant to 28 U.S.C. § 1409.

25 **ALLEGATIONS RELATED TO INSURANCE POLICIES**

26 19. Upon information and belief as to their accuracy, the Committee

incorporates by reference paragraphs 22 to 36 of the Archdiocese's Complaint.

CLAIM FOR RELIEF - DECLARATORY JUDGMENT

20. The Committee realleges the allegations of paragraphs 1 through 19 above.

21. There is an actual dispute between the Committee and defendants regarding defendants' obligations with respect to the Underlying Claims.

22. Defendants contend that they have no obligation to defend and/or indemnify the Archdiocese for any sums that the Archdiocese becomes legally obligated (through judgment, settlement or otherwise) to pay with respect to Underlying Claims, and for such further liabilities as may arise from such judgment or settlement or other resolution of Underlying Claims.

23. The Committee contends that the Archdiocese is entitled to such insurance coverage.

24. The Committee further contends that defendants have breached their obligations, as set forth in each of their respective Insurance Policies, by refusing or otherwise failing to fully honor all obligations to pay on behalf of or reimburse the Archdiocese for all sums that the Archdiocese has paid, or may become legally obligated to pay, as a result of Underlying Claims occurring during defendants' respective policy periods.

25. The Committee has a direct and legally protectable interest in the Archdiocese's insurance proceeds with the meaning of Fed. R. Civ. P. 24 for the following reasons:

(a) The Committee represents tort claimants, both known and unknown, in the Archdiocese's bankruptcy case;

(b) As debtor-in-possession, the Archdiocese owes a fiduciary duty to its creditors to protect and maximize the assets of the bankruptcy estate;

(c) One Committee member, Joseph Chestnut, has entered into an

1 enforceable settlement agreement with the Archdiocese on which he is owed a balance of
2 \$1,300,000;

3 (d) The Archdiocese has conceded that it has incurred liability to at
4 least some tort claimants who have not yet obtained a judgment against or entered into a
5 settlement with the Archdiocese; and

6 (e) According to the Archdiocese's Schedules, it is insolvent, and
7 if this contention is accurate, coverage under defendant's respective Insurance Policies is the
8 only means of satisfying the unsecured claims of the tort claimants represented by the
9 Committee.

10 26. By reason of the foregoing, an actual and justiciable controversy exists
11 regarding the obligations of defendants with respect to Underlying Claims. Pursuant to
12 Fed. R. Bankr. P. 7024, Fed. R. Civ. P. 24, and O.R.S. § 28.010, *et seq.*, the Committee is
13 entitled to a declaration of the parties' rights and obligations with respect to the Insurance
14 Policies and, specifically, a declaration that the Archdiocese is entitled to all the relief sought
15 in its First through Sixth Claims for Relief, as well as such other and further relief as the
16 Court deems just and proper.

17 WHEREFORE, the Committee respectfully requests a judgment declaring that
18 the Archdiocese is entitled to all the relief sought in its First through Sixth Claims for Relief,
19 as well as such other and further relief as the Court deems just and proper.

20 DATED this ____ day of _____, 2004.

21 TONKON TORP LLP

22
23 By _____
24 ALBERT N. KENNEDY, OSB No. 82142
25 Attorneys for Tort Claimants Committee

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